

MELE POTO HUNI v. SIONE PUTA.

(Civil Action : Hunter J. Nuku'alofa, 11th January, 1955)

Contract for the sale of goods — Meaning of "goods". — The Contract Act 1921 — Agreements between Tongans — Applicability of Contract Act. The plaintiff sued the defendant for £1,000 being the price she alleged the defendant had agreed to pay for certain tapa delivered to the defendant by the plaintiff. There was no written statement or invoice. The plaintiff's counsel submitted that the agreement did not come within the provisions of Section 3 of the Contract Act 1921 (Cap. 66), as that Act only applies to dealings between foreigners and Tongans and further that the word "goods" as used in Act applies only to articles sold in a store; and that therefore no written statement or invoice was necessary. At the end of the plaintiff's evidence the Court heard argument as to whether the plaintiff could recover in view of the admitted absence of any writing.

HELD. That the Contract Act 1921 applies to dealings between Tongans and that the word "goods" is not limited to articles sold in shops. Verdict for the defendant.

Tu'akoi appeared for the plaintiff.

Vete appeared for the defendant.

C. A. V.

HUNTER J. In this case the Plaintiff is suing Defendant for the return of certain articles or their value plus £100 damages.

The Plaintiff's evidence was that she went to Vava'u in 1950 with two rolls of tapa. She made two subsequent trips taking more tapa and certain food stuffs. All these she handed to the Defendant. The arrangement was that the Defendant was to sell these things (and possibly more which the Plaintiff would provide) and pay to the Plaintiff the sum of £1,000.

The Plaintiff said in answer to me : "It did not concern me for how much the Defendant sold the articles; he was to pay me £1,000 whether he got more or less than £1,000 for them. His recompense was to be the amount for which he sold them over £1,000. If he got less he had to bear the loss."

On this and the other evidence given by the Plaintiff I hold that this transaction was a sale by the Plaintiff to the Defendant for £1,000.

Counsel for the plaintiff suggested that the Defendant was really the Plaintiff's agent and that no property in the articles ever passed to him but the Plaintiff herself said in cross examination "The Defendant was not my agent to sell the property."

The Plaintiff admitted that there was no agreement in writing as required by Cap. 66.

Counsel for the Plaintiff submitted that this transaction does not come within the provisions of Cap. 66 because.

- (a) The Act only refers to dealings between Tongans and foreigners and;
- (b) The word "goods" in Section 3 means merchandise sold in shops.

He cited an old act (now repealed) passed in the reign of George Tupou I which was an act dealing with sales to Tongans by foreigners on credit and submitted that the present act should be construed in the light of this earlier legislation.

I can see nothing in Cap. 66 to limit its operation to dealings between Tongans and foreigners, and I can see nothing in S. 3, or in the act generally, to limit the meaning of "goods" to articles sold in shops. The Legislature may have meant this, but it did not say so.

In view of the Plaintiff's evidence I have the greatest sympathy for her. If what she said is true, and she impressed me as truthful, the defendant must be a person utterly devoid of any honesty but of course I have not heard his version of the facts.

However, the Court cannot base its judgment on sympathy, it is bound by law, and in my view S. 3 of Cap. 66 applies to this case and therefore the action is not maintainable.

Accordingly I give judgment for the Defendant.

I make no order as to costs as the Defendants counsel said that in view of the facts he did not ask for them.
